

AVIATION SECURITY (AMENDMENT) ORDINANCE 2005

CONTENTS

Section	Page
1. Short title and commencement	A441
2. Interpretation	A441
3. Acts of violence committed during hijacking or attempted hijacking, etc.	A441
4. Sections added	
12A. Acts of violence, threats, destruction of property, etc., in general	A443
12B. Offences in relation to unruly behaviour, etc.	A443
12C. Request and undertaking	A447
5. Powers exercisable on suspicion of intended offences	A447
6. Extraterritorial application of sections 8, 9, 11, 12, 12A, 12B and 15	A447
7. Amendment of Schedules 1 and 3	A449
8. Schedule 3 added	
Schedule 3 Request and undertaking under section 12C of the Aviation Security Ordinance (Cap. 494) ..	A449
9. Sections amended	A451
Aviation Security Regulation	
10. Reporting of incidents	A451

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 14 OF 2005

L.S.

Donald TSANG
Chief Executive
7 July 2005

An Ordinance to amend the Aviation Security Ordinance and to provide for a related matter.

[]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Aviation Security (Amendment) Ordinance 2005.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Aviation Security Ordinance (Cap. 494) is amended by adding—

““non-Hong Kong-controlled aircraft” (非香港控制的飛機) means an aircraft other than a Hong Kong-controlled aircraft;”.

3. Acts of violence committed during hijacking or attempted hijacking, etc.

Section 12(1) is amended by repealing “or to section 9(1)(b)” and substituting “, 9(1)(b) or 12A”.

4. Sections added

The following are added—

“12A. Acts of violence, threats, destruction of property, etc., in general

(1) Without prejudice to section 3, 9(1)(b) or 12 but subject to section 12C, where a person does on board any aircraft (wherever registered) and while outside Hong Kong any act which if done in Hong Kong would constitute an offence under section 17(a), 19, 39 or 40 of the Offences against the Person Ordinance (Cap. 212) or section 24, 60, 118, 118A, 122, 146 or 148 of the Crimes Ordinance (Cap. 200), the act shall constitute that offence.

(2) For the avoidance of doubt, the references to “public place” and “the public” in section 148(1) of the Crimes Ordinance (Cap. 200) shall, for the purposes of subsection (1), be deemed to include an aircraft and the passengers and crew of an aircraft, respectively.

12B. Offences in relation to unruly behaviour, etc.

(1) Any person on board an aircraft who wilfully obstructs a member of the crew of the aircraft in the performance of his duties commits an offence.

(2) Any person on board an aircraft who, without reasonable excuse, fails to comply with any instruction given to the person by the commander of the aircraft, or on behalf of the commander by a member of the crew, for the purpose of—

(a) protecting the safety of the aircraft or of persons or property on board the aircraft; or

(b) maintaining good order and discipline on board the aircraft, commits an offence.

(3) Any person on board an aircraft who behaves in a disorderly manner whereby the good order or discipline on board the aircraft is or is likely to be jeopardised commits an offence.

(4) Any person on board an aircraft who wilfully tampers or interferes with—

(a) any component of the aircraft;

(b) any apparatus or equipment of the aircraft (including, but not limited to, smoke detectors); or

(c) any system installed in the aircraft,

commits an offence.

(5) Any person who, without reasonable excuse, embarks on an aircraft in such a state of intoxication, or becomes intoxicated on board an aircraft to such an extent, as to jeopardise or be likely to jeopardise—

(a) the safety of the aircraft or of persons or property on board the aircraft; or

(b) good order and discipline on board the aircraft,

commits an offence.

(6) Any person on board an aircraft who smokes in the aircraft or in any compartment of the aircraft—

- (a) when smoking in the aircraft, or in that compartment of the aircraft, as the case may be, is prohibited; or
- (b) when instructed not to smoke by a member of the crew of the aircraft,

commits an offence.

(7) Any person on board an aircraft who operates an electronic device in the aircraft or in any compartment of the aircraft—

- (a) when operating such a device in the aircraft, or in that compartment of the aircraft, as the case may be, is prohibited; or
- (b) when instructed not to operate the device by a member of the crew of the aircraft,

commits an offence.

(8) Subject to section 12C, subsections (1), (2), (3), (4), (5), (6) and (7) apply whether any act mentioned in those subsections is committed in Hong Kong or elsewhere and whatever the country or territory in which the aircraft is registered.

(9) A person who commits an offence under subsection (1) or (2) is liable—

- (a) on summary conviction, to a fine at level 4 and to imprisonment for 1 year;
- (b) on conviction on indictment, to a fine at level 6 and to imprisonment for 5 years.

(10) A person who commits an offence under subsection (3), (4), (5), (6) or (7) is liable—

- (a) on summary conviction, to a fine at level 3 and to imprisonment for 6 months;
- (b) on conviction on indictment, to a fine at level 5 and to imprisonment for 2 years.

(11) For the purposes of subsection (6) but without limiting the generality of that subsection, smoking in an aircraft or in a compartment of an aircraft shall be treated as prohibited if passenger information signs on board the aircraft indicate that smoking in the aircraft or in that compartment of the aircraft, as the case may be, is prohibited.

(12) For the purposes of subsection (7) but without limiting the generality of that subsection, operating an electronic device in an aircraft or in a compartment of an aircraft shall be treated as prohibited if passenger information signs on board the aircraft indicate that the operation of such a device in the aircraft or in that compartment of the aircraft, as the case may be, is prohibited.

(13) In subsection (5), “state of intoxication” (神智不清的狀態) and “intoxicated” (神智不清) mean being under the influence of alcohol, drugs or other intoxicating substances.

12C. Request and undertaking

(1) Sections 12A and 12B do not apply to an act committed by any person on board a non-Hong Kong-controlled aircraft while in flight elsewhere than in or over Hong Kong unless—

- (a) the next place of landing of the aircraft is in Hong Kong; and
- (b) the commander of the aircraft, in the form set out in Schedule 3—
 - (i) makes a request to the Hong Kong Police Force to commence proceedings against the person; and
 - (ii) gives an undertaking that he, and the operator of the aircraft, has not made and will not make a similar request to the authorities of any place outside Hong Kong.

(2) A request and undertaking by a commander of an aircraft in the form set out in Schedule 3 shall—

- (a) be admissible in evidence in any proceedings before a court in Hong Kong; and
- (b) in the absence of evidence to the contrary, be sufficient evidence of the matters stated in the form.

(3) For the avoidance of doubt, a person in respect of whom a request is made in the form set out in Schedule 3 may be charged with or convicted of any offence under the law of Hong Kong for which he may be liable, notwithstanding that the offence is not stated in that form to have been suspected to have been committed.”.

5. Powers exercisable on suspicion of intended offences

Section 13(1) is amended by repealing “or 12” and substituting “, 12, 12A or 12B”.

6. Extraterritorial application of sections 8, 9, 11, 12, 12A, 12B and 15

Section 21 is amended by adding “, 12A, 12B” after “12”.

7. Amendment of Schedules 1 and 3

Section 64 is amended by adding “or 3” after “1”.

8. Schedule 3 added

The following is added—

“SCHEDULE 3

[ss. 12C
& 64]

REQUEST AND UNDERTAKING UNDER SECTION 12C
OF THE AVIATION SECURITY ORDINANCE (CAP. 494)

To: The Hong Kong Police Force

Request:

I, [*insert full name*], commander of flight [*insert number*], request, under section 12C of the Aviation Security Ordinance (Cap. 494), that proceedings be commenced against [*insert full name*] of [*insert address if known*], as I have reason to suspect that on [*insert date*] on flight [*insert number*] this person committed an offence under section 12A or 12B of the Aviation Security Ordinance (Cap. 494), namely:

[*state the offence(s) suspected to have been committed, e.g., an offence under section 17(a) of the Offences against the Person Ordinance (Cap. 212), an offence under section 12B(1) of the Aviation Security Ordinance (Cap. 494), etc.*]

Undertaking:

Pursuant to section 12C of the Aviation Security Ordinance (Cap. 494), I undertake that neither I nor [*insert name of the operator of the aircraft*] have made, or will make, a similar request to the authorities of any place outside Hong Kong.

.....
Signature of commander

Witnessed by me at Hong Kong on
[insert date]

.....
Signature of police officer”.

9. Sections amended

(1) The Ordinance is amended in the following provisions by adding “而無合理辯解” after “而該行為在他被定罪後持續”—

- (a) section 39(4);
- (b) section 48(2).

(2) The Ordinance is amended in the following provisions by repealing “經營” wherever it appears and substituting “營運”—

- (a) section 2(1) (in the definitions of “香港控制的飛機” and “經營者”);
- (b) section 8(4);
- (c) section 37(5);
- (d) section 42(2).

Aviation Security Regulation

10. Reporting of incidents

Section 20 of the Aviation Security Regulation (Cap. 494 sub. leg. A) is amended by adding—

- “(aa) an act by a passenger on one of its aircraft in contravention of section 12A or 12B of the Ordinance;”.